Board of Inquiry Decision under the ONTARIO HUMAN RIGHTS CODE, 1981, S.O. 1984, c. 53, as amended, now R.S.O. 1990, c. H.19.

Jane Ward — Complainant

v.

Fred Godina — Respondent

Before: Peter A. Cumming, Board of Inquiry

Place: Toronto, Ontario

Appearances: Ms. Stella Savage, Counsel for Complainant

Ms. Mary Truemner, Counsel for Centre for Equal Rights in Accommodation;

Ms. Kikee Malik, Counsel for Ontario Human Rights Commission; and

Mr. Peter Carlisi, Counsel for the Respondent

Reasons for Decision

The Evidence

The complainant, Jane Ward, age 36 at the time of the hearing, became a tenant in apartment #104, 186 Danforth Road, Scarboro, Ontario in March, 1980. The building consists of 15 apartments, eight of which are two bedroom apartments, the remainder having one bedroom. In August, 1986, a friend of Ms. Ward, Cheryl Jamieson, moved in with her.

The respondent, Fred Godina, age 51, purchased this apartment building July 1, 1987. Mr. Godina, with a Grade 6 education, was one of 10 children in a family that lived in a village in Yugoslavia exposed to the ravages of World War II. Mr. Godina had come to Canada in 1967 from Slovenia where he had been a bricklayer, apprenticed as a steamfitter and became a Canadian citizen in 1972. By all accounts, he has worked extremely hard to build for himself a better life in Canada.

In 1980 Mr. Godina purchased a small building in Mississauga for $135,000 which he sold in 1987 for $350,000, enabling him to purchase the apartment building at 186 Danforth Road for $730,000.

Mr. Godina managed the building over July and August, 1987, and moved into apartment #101 September 1, 1987, where he continues to reside. Ms. Ebi Toplak has lived with him at that address since 1983. Ms. Ward's apartment, #104, was 'kitty corner' to that of Mr. Godina and Ms. Toplak, being apartment #101.

In 1987, the then tenant in apartment #102, Mr. Craig, was moving out of his two bedroom apartment. Ms. Carol Teed, then a tenant with her young son in apartment #B1, a two bedroom apartment, asked Mr. Godina if she could move into Mr. Craig's apartment and he consented to this.

When Ms. Ward learned of the impending vacancy in respect of apartment #102, she asked Mr. Godina if she and Ms. Jameson could move from apartment #104 to apartment #102. Mr. Godina was also asked by at least two other existing tenants if they could have apartment #102. Mr. Godina advised Ms. Ward and these other tenants that he had already committed apartment #102 to Ms. Teed as she was the first to ask him. Everyone, other than Ms. Teed, was upset with Mr. Godina. In particular, Ms. Ward felt aggrieved because she had been in the building longer than Ms. Teed. By her own admission, she "yelled" at Mr. Godina. He testified she swore at him as well and called him a "foreigner". Ms. Toplak confirmed Mr. Godina's version of this encouter. She said that Ms. Ward was verbally very abusive to Mr. Godina, and was angry and swearing. She said that Ms. Ward would often argue with, and scream at, Mr. Godina.

In any event, Mr. Godina then made a decision not to allow any more transfers of apartments within the building so as to avoid any similar conflicts in the future.

Mr. Godina could not satisfy everyone. Therefore, he initiated a no-transfer policy whereby no existing tenants in the building desiring a transfer could be satisfied, but at least all

existing tenants would be equally dissatisfied.

Ms. Jameson vacated Ms. Ward's apartment #104, in November, 1987, at which time Robert Poulin moved in. He and Ms. Ward were married in 1992.

In early February, 1988, Ms. Ward determined that she was pregnant and requested of Mr. Godina that he allow her and Mr. Poulin to transfer to a two bedroom apartment within the building when one should become available. Mr. Godina told her he would not allow her a transfer within the building.

In April, 1988, a two bedroom apartment, #302, became available and Mr. Godina rented it to a couple from outside the building, Duke and Betty Kim. The Kims had applied April 10, 1988.

A second two bedroom apartment became available, being apartment #202, which Mr. Godina again rented to someone from beyond the building, being Ms. Carol Butt and her adult daughter, Celeste. Ms. Butt's application (Exhibit #22) was June 10, 1988. Ms. Ward made a formal application (Exhibit #7) July 6, 1988, but Mr. Godina had been aware of Ms. Ward's desire for a two bedroom apartment through her verbal request in April, 1988.

For the last two months of her pregnancy, Ms. Ward was confined to hospital. Ms. Ward's daughter was born September 1, 1988. She testified that it was very cramped in a one

bedroom apartment with the baby. The child slept in the bedroom, with the crib and dresser being situated there. Mr. Poulin is a carpenter, and with the baby awakening during the night it affected his sleep and as a consequence, his ability to work. Ms. Ward testified that she and Mr. Poulin would more easily become mad with each other in the crowded situation. Ms. Ward stated that the confined situation resulted in stress, and as a consequence of the stress she would find her stomach tie up in knots, would suffer diarriah and even vomit on occasion. No medical evidence was given.

Ms. Ward liked 186 Danforth Road. She had a brother who lived in apartment #304, although his alleged behaviour caused problems for other tenants and Mr. Godina asked him to leave at a later point in time.

Ms. Ward knew and liked the other tenants and the surrounding community. Her physicians, banking, shopping and place of employment were all nearby. As well, 186 Danforth Road was subject to rent control, such that the rents were quite reasonable for the area and not easily found elsewhere in the vicinity. Moreover, while she had taken a year off work to look after her baby after her birth, she was confident she could have suitable child care arrangements within the building once she returned to her employment. Mr. Poulin had grown up in the area, worked in the neighbourhood and shared driving to work with an associate who lived in the area. It was also a time of very low vacancy rates.

Ms. Ward testified that she wanted her baby to have her own bedroom. She and Mr.

Poulin did look at other apartment buildings in Scarboro but were met with the problem of no vacancies or unaffordable rents. Mr. Poulin's brother offered them a cottage to live in the North Bay Ontario area for 6 or 8 months. They saw that this would provide accommodation until they could build their own home, and they were both able to arrange for a transfer in their employment to North Bay. Mr. Poulin's sister also was prepared to move to North Bay at the same time, and they had some relatives there already. Accordingly, they left 186 Danforth Road August 31, 1989, and moved to the North Bay area where they continue to reside. They now have a second child. Ms. Ward had filed her Complaint (Exhibit #2) July 12, 1989, before leaving Toronto. However, Ms. Ward had spoken to Ms. Stella Savage, her counsel, some time previously, who had written to the Human Rights Commission in November, 1988 about Ms. Ward's problem.

Mr. Poulin testified that he considered apartment #104 to be Jane Ward's rather than his own, so that he was not an active, assertive force in the dispute and did not really engage in any conversations with Mr. Godina about his family's desire to move; however, he said on one occasion Mr. Godina made it clear to him he was not going to allow a transfer and preferred that Ms. Ward and Mr. Poulin move out of the building.

Carol Teed had moved into 186 Danforth Road in 1985 and was later to become president of a tenant's association formed for the building about three months after Mr. Godina became the owner.

Both Ms. Ward and Ms. Teed testified that when Mr. Godina became owner the personality of the building changed. They said that Mr. Godina did not want the children to play on the grass lawn between the building and Danforth Road. They said he did not like children and would yell at them.

The Complainant alleges that Mr. Godina had initiated a policy of not renting apartments to families with young children. The witnesses Carol Teed and Margaret Murphy were of the same view. They said that Mr. Godina was harsh with children. They testified the character of the building changed from a friendly, family orientation to the opposite when Mr. Godina became the landlord. Ms. Teed said she left because her child was no longer happy in the building.

Margaret Murphy, who had lived in apartment #302 until March 31, 1988, with her husband and two young children, said that Mr. Godina would not allow the children to play in the hallways when the weather was bad. She said they left in part because her son was afraid of Mr. Godina.

However, Duke Kim testified that when he and his spouse, Betty, rented an apartment in the building in April, 1988, there was no apparent discouragement by Mr. Godina of young couples who would be eager to have children. Ms. Toplak testified that when the Kims had first viewed the apartment, that Betty Kim had told her the Kims hoped to have a family. Mr. Kim also testified that Mr. Godina was a good landlord and kept a neat, clean building. Several other

tenants have written letters complimenting Mr. Godina as a landlord. (Exhibits #18, #19).

Ms. Lesline Anderson, who became a tenant May 31, 1990, and now has three young children, testified that Mr. Godina gets along well with the children of the building, and that the building is clean, well managed and well taken care of.

Similarly, Ms. Annette Lewis, who lived with her husband and infant daughter at 186 Danforth Road from August, 1991 to July, 1992, testified that Mr. Godina was a "great landlord" who got along well with the children in the building.

Mr. Godina has impaired hearing and said that as a result, he sometimes speaks in a louder voice than normal, which might frighten children. He also expressed concern for the safety of children when playing in the vicinity of Danforth Avenue which has considerable vehicular traffic.

Ms. Helena Grabouska, who had imigrated from Poland and was a tenant with her husband at 186 Danforth Road in 1988, left Canada to again live in Poland from September, 1988 to February, 1993. She testified that when she and her husband then returned to Canada and could not easily find a place to live, Mr. Godina kindly allowed them to stay in his own apartment until they could get settled. Mr. Grabouska testified that Mr. Godina also told her that on renting another apartment at 186 Danforth Road she would not be able to move within the building.

Ms. Toplak testified that she and Mr. Godina are anxious to have children; however, they have had difficulties conceiving.

Mr. Godina prepares his own leases and his English language and typing skills are limited. At some point after the altercation with Jane Ward, he inserted a clause "No Moving from APT to APT" (Exhibit #24, for example, Anderson/Simpson lease May 31, 1990; Nortes lease, September 23, 1991; Stephen Murphy lease, February 17, 1994). It seems he did not allow any internal transfers after his altercation with Ms. Ward in 1987. However, the clause was not in leases signed August 29, 1988 (Grabouska lease, Exhibit #23) and February 27, 1990 (Anastasakos lease, Exhibit #23).

Although Mr. Godina did not allow further internal transfers after his dispute with Ms. Ward in 1987, he allowed external applicant families with children to become tenants.

A young family with a newborn infant (Benson rental application, Exhibit #23) was accepted as a tenant in November, 1987. A family of two parents with a 14 year old moved into apartment #B1 after Carol Teed moved to apartment #102 in 1987. Clearly, leases were entered into with families with small children (for example, Anastasakos lease February 27, 1990, Exhibit #23, Louis lease, July 28, 1991, Exhibit #23). Considering all the evidence, I find that there was no policy on the part of Mr. Godina to exclude children from the building. That is, he was not seeking to have an 'adults only' apartment building.

It's not easy being a landlord. Mr. Godina was subject to verbal, and even physical, abuse by some of his tenants from time to time.

Mr. Godina did not want Ms. Ward as a tenant after his altercation with her in 1987. She had given him, as he put it, "too hard a time". His no-transfer policy was designed in part to get rid of an undesirable tenant. He knew she would eventually quite probably move if she did not receive a transfer. Mrs. Murphy testified that Mr. Godina knew Ms. Ward wanted the Murphy apartment, #302, but had said Ms. Ward would not get it. Mrs. Murphy had also given to Mr. Godina the names of two other tenants who were possibly interested in a transfer; however, he proceeded to advertise it externally in the Toronto Star and rented it to the Kims.

Ms. Ward wanted a two-bedroom apartment after 1987 given the anticipated birth of her child and was denied any opportunity of getting one because of the no-transfer policy. She and Mr. Poulin made some modest efforts to search for alternative accommodation elsewhere but were unsuccessful. Her spouse, Robert Poulin, made no real effort to talk with Mr. Godina with a view to getting him to allow them to have a two bedroom apartment at 186 Danforth Road. He was a passive participant in the dispute.

Ann Fitzpatrick testified as an expert (see Exhibits #12, #13) about the housing needs of young families. She testified that a forced move with a newborn is more stressful than a chosen move, particularly if the chosen move would be one within the same building. She stated there is a direct impact upon children in respect of a move and, more significantly, there is an

indirect impact upon children through the stress placed upon the parent of the child which in turn impacts negatively upon the parent's caregiving functions with the child. Dr. Ruth Stirtzinger, a psychiatrist (Exhibits #16, #17) testified to the same effect.

Ms. Fitzpatrick stated that in a tight housing market families both within and outside the building have needs and she was reluctant to suggest a specific policy as to offering vacant apartments.

Ms. Ward filed her Complaint (Exhibit #2) July 12, 1989, alleging unlawful discrimination by reason of Mr. Godina's practice and policy of denying internal transfers within his apartment building. She alleges that this practice and policy impacts negatively on a group of people of which she is a member, identified by their family status, in contravention of the *Ontario Human Rights Code*, now being R.S.O. 1990, c. H.19 (hereinafter, the "*Code*"). My references to the *Code* shall be to the current provisions, however, these provisions are identical to those in force at the times relevant to Ms. Ward's Complaint.

Issues

(1) Was there direct, or intentional discrimination within the meaning of sections 2(1) and 9 of the *Code*?

(2) Was there indirect or constructive discrimination within section 11 of the *Code*?

(3) If there was discrimination, what are the appropriate remedies?

Direct Discrimination Analysis

A landlord is prohibited from denying occupancy of rental accommodation because of "family status" (section 2(1), *Code*). Family status "means the status of being in a parent and child relationship" (section 10(1)).

With respect to the burden of proof, the Complainant bears the initial onus of establishing a *prima facie* case of discrimination on a balance of probabilities, or preponderance of evidence, after which the burden shifts to the Respondent to establish a defence: *Charles F. Holden and Canadian Human Rights Commission* v. *Canadian National Railway* (1991), 14 C.H.R.R. D/12 (FCA) at D14.

The reasons for discrimination can be inferred from circumstantial evidence: Vizkelety, Béatrice Proving Discrimination In Canada, (Toronto: Carswell) 1987, 142; *McDonnell Douglas Corporation* v. *Green* (1973), 93 S. Ct. 1817 at 1824.

In my view, a respondent can be found to be discriminating against a person on the prohibited ground of "family status" even before the birth of a child when the child was anticipated and that is an operative reason for the discriminatory treatment: *Heather Peterson* v. *Ross Anderson and Jean Anderson* (1992), 15 C.H.R.R. D/1 (Ont. Bd. of Inquiry) at D/4, para. 24, D/5, para. 31. Human rights legislation is to be given a liberal and purposive interpretation: *Ontario Human Rights Commission and Theresa O'Malley* v. *Simpson-Sears Limited* (1986), 7 C.H.R.R. (SCC) D/3102 at D/3105, para. 24766.

In the instant case, Ms. Ward was denied any consideration of obtaining a two bedroom apartment when she was known to be expecting a child and wanted the larger apartment for the very reason of her expanding family. Despite her need and qualification, she was rejected and the apartment was given to someone else.

Ms. Ward has established a *prima facie* case on this evidence. The onus then shifts to the Respondent for a rational explanation: *Peter Mitchell* v. *Nobillium Products Limited* (1982), 3 C.H.R.R. D/641 (Ont. Bd. of Inquiry) at D/642, D/643.

Mr. Godina rented apartments to families with children after refusing Ms. Ward, both before her Complaint and after. I accept his evidence as to the reasons for his refusal of Ms. Ward. He intentionally discriminated against her, inasmuch as he denied her a two bedroom apartment, while allowing others (the Kims and the Butts) to rent same. But he did not intentionally discriminate on a basis of "family status" Rather, Ms. Ward had been rude to him, and as a result he did not like her and thought there was a better chance of getting rid of her as a tenant if he did not accommodate her wish for a transfer. As well, following upon the unfortunate 1987 experience with Ms. Ward and other tenants also wanting a transfer, he set in place a policy of no internal transfers. Mr. Godina hoped thereby to avoid further confrontations. He could not make everyone happy if more than one existing tenant sought an internal transfer. Accordingly, he set a policy in place whereby no one could transfer internally, and while this might mean no existing tenant seeking a transfer would be happy, it avoided having to make a decision as to who would be given a preference.

It is enough to constitute a *prima facie* case if only one operative factor for the refusal to provide the rental accommodation was based upon a prohibited ground: *Regina* v. *Bushnell Communications Ltd. et al.* (1973), 45 D.L.R. (3d) 218 (H.C.J.) at 223; *Christine Horton* v. *The Regional Municipality of Niagra and E.P. Odell and T. Orvidas* (1988), 9 C.H.R.R. (Ont. Bd. of Inquiry) D/4611 at D/4615, para. 35812.

In the case at hand, considering all the evidence, I find that "family status" was not a factor at all with respect to Mr. Godina's intentions in not giving Ms. Ward (or anyone else) a transfer. "Family status" was not an operative factor in his decision-making. Mr. Godina was hopeful Ms. Ward would more likely move out of the building once she had a child because he would not let her transfer. But he was not denying her the transfer because of the child. He would just as quickly have denied her request for a transfer if no child was present or ever anticipated.

Counsel argued that the no-transfer policy was only put in place in response to the Complaint. If this were true, it would mean that the unlawful discrimination, if such there was through the policy, was not in place until after Ms. Ward's departure. However, in my view of the evidence, and I so find, the no-transfer policy was in place after Mr. Godina's altercation with Ms. Ward in 1987. This policy was one operative factor which precluded Ms. Ward from having any opportunity of an internal transfer to a larger apartment.

Constructive Discrimination Analysis

Section 11(1) of the *Code* provides that a person's right to equal treatment is infringed where a "qualification" or "factor" exists that is not due to intentional discrimination but results in the exclusion or restriction "of a group of persons who are identified by a prohibited ground of discrimination" ("family status" in the case at hand) and of whom the Complainant is a member.

To establish a *prima facie* case on a basis of constructive discrimination, Ms. Ward must show that there was a non-transfer policy, it resulted in the exclusion or restriction of a group identified by their "family status" and that she is a member of that group.

Upon the *prima facie* case of constructive discrimination having been proven, to have a successful defence, a respondent then has the onus to establish that the factor "is reasonable and *bona fide* in the circumstances": section 11(1)(a) of the *Code*. See Keene, Judith, *Human Rights in Ontario*, 2nd ed., (Toronto: Thompson Canada Ltd.) 1992 at 135-141.

Ms. Ward was, as I have held above, a member of a group (families with children) identified by "family status". The policy of excluding internal transfers results in the exclusion of this group from transferring to larger living space within the building as their families grow. This policy is neutral on its face in that it applies to all existing tenants, whether the existing tenant family has children or not. However, the policy has a disproportionate effect or adverse impact upon families with children. They are generally the ones who need more living space

and who are more likely to seek transfers. Being unsuccessful, they are the families who must then either suffer the disadvantage of limited living space or seek external accommodation to meet their needs, with the consequential inconvenience and upsetedness. Families placed in such a situation are inevitably under additional stress through the disruption which has a deleterious impact upon all members of the family. As a result, in the case at hand, Ms. Ward's right to "equal treatment with respect to the occupancy of accommodation" has been denied. Somewhat paradoxically, it is only families within existing apartments at 186 Danforth Road who are excluded from the opportunity of applying for a vacant apartment therein. Families with children from beyond the building may gain admittance.

Alberta Human Rights Commission v. *Central Alberta Dairy Pool* (1990), 12 C.H.R.R. D/417 (S.C.C.), is a leading case to define indirect discrimination. Madame Justice Wilson defined adverse effect discrimination in an employment setting as being:

> ...when an employer for genuine business reasons adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or a group of employees in that it imposes, because of some special characteristic of the employee or group obligations, penalties or restrictive conditions not imposed on other members of the workforce...[the rule] honestly made for sound economic or business reasons, equally applicable to all to whom it is intended to apply may yet be discriminatory if it affects a person or group of persons differently from others to whom it may apply. (at D/427, para. 31).

This reasoning is equally applicable to a rental accommodation factual situation. Mr. Godina adopted his no-transfer policy for genuine business reasons in a subjective sense (his desire to avoid conflicts and jealousies amongst existing tenants) and the policy is neutral on its face, being equally applicable to all to whom it is intended to apply. However, the policy has

a discriminatory effect upon the prohibited ground of family status on the group of tenants who consist of families with new or growing children and who need more space. The policy is discriminatory because it affects this group of tenants differently and adversely from other tenants who do not have children.

Where a *prima facie* case of constructive discrimination is established within section 11(1) of the *Code*, the onus is then upon the Respondent to show that "the requirement, qualification or factor is reasonable and *bona fide* in the circumstances" (section 11(1)(a)). I have no doubt that Mr. Godina's intention and motive for the policy was *bona fide*. However, it is not enough to meet the test of being "reasonable" if the restriction is honestly seen by Mr. Godina subjectively to be reasonable. That is, the policy is not "reasonable...in the circumstances" if it discriminates on a prohibited ground and there is not a real need for the policy on an objective basis. The policy is also not reasonable "in the circumstances" if the respondent can accommodate the complaint and the group adversely affected without undue hardship. *Alberta Dairy Pool* decision, *supra*, at D/438, para. 62.

The duty to accommodate inherent to the "reasonable and *bona fide* in the circumstances" standard in section 11(1) is applicable to all grounds of discrimination, including "family status". See *Donna Marie Brown and Canadian Human Rights Commission* v. *Department of National Revenue (Customs and Excise)* (1993), 19 C.H.R.R. D/39 (Canadian Human Rights Tribunal) at D/56. See generally Lepofsky, David "The Duty to Accommodate: A Purposive Approach", Canadian Labour Law Journal. There can be no doubt that the legislative intent of the *Code* is

to protect families and their children in their access to reasonable living accommodation: *Jeanne Fakhoury* v. *Las Brisas Ltd., carrying on business as Darcel Condominium Apartments and East West Management Company, Carl Epstein and Estelle Epstein* (1987), 8 C.H.R.R. D/40 28, (Ont. Bd. of Inquiry), at D/4036, para. 3193.

In *Cindy Cameron* v. *Nel-Gor Castle Nursing Home and Marlene Nelson* (1984), 5 C.H.R.R. D/2170 (Ont. Bd. of Inquiry, leave to appeal denied) at D/2179, para. 18379 the predecessor to section 11 was first analyzed.

> That is, the "reasonable...in the circumstances" standard of section [11] of the new *Code* embraces two facets - the employer must show not only that there is an objective real need (it is "reasonable") for the general employment requirement that constructively discriminates against the particular employee, but also that this need of the employer cannot be met (in "the circumstances", it is not "reasonable" to be able to do so) by an accommodation of the particular employee.

Clearly in the case at hand Ms. Ward, and other existing tenants with children, could be accommodated without any hardship to Mr. Godina, let alone undue hardship. At most, the removal of the no-transfer policy would impose a minor business inconvenience upon Mr. Godina because he would have to consider internal applicants along with external applicants for vacant apartments. Probably the easiest way to allocate vacant apartments would be to establish a chronological waiting list which includes internal and external applicants. Alternatively, a lottery could be used.

Mr. Bruce Porter, Co-ordinator of the Centre for Equality Rights in Accommodation ("CERA") in Toronto, testified as an expert with respect to housing needs for families,

overcrowding and its impact upon families, and the rental housing situation in Toronto at the times relevant to this Complaint. Mr. Porter's report and evidence (Exhibit #34) traced the history of legislation in Ontario with respect to extending human rights protections for families with children and placing upon landlords a duty to accommodate the needs of families with children; and the rights of families with children to adequate housing in international law and the effect on the interpretation of domestic human rights protections.

This is an unusual case inasmuch as the restrictive policy applied only to internal tenants, as I have determined considering all the evidence. Mr. Porter stated that the experience of his organization suggests this may not be a unique situation. However, the larger problem has been, of course, the existence of 'adult only' restrictive bylaws in condominium corporations, and landlords who prefer not to have any children. In both instances, tribunals and courts have found the restrictive policies to constitute unlawful discrimination because of family status. See for example, *York Condominium Corporation No. 216 (No. 2) et al.* v. *Flora Dudnik et al.* (1990), 12 C.H.R.R. D/325 (Ont. Bd. of Inquiry), reversed in part on appeal (1991), 14 C.H.R.R. D/406 (Ont. Div. Ct.), appeal pending to Court of Appeal, and *Heather Peterson* v. *Ross Anderson and Jean Anderson, supra.*

Families with children have special needs. Children within those families need nurturing. Adequate housing is an essential to an adequate standard of living. Coming to the case at hand, when a family living in an apartment building needs more space because of a newborn and is able to, and wants to, pay for a larger apartment, that family should not be met by a restrictive

policy which precludes any possibility of getting the new accommodation because it will be offered only to external applicants. Public policy dictates that exercising freedom in respect of property one owns is justifiably circumscribed by the need to protect the basic human rights of others. Moreover, society as a whole has an interest in ensuring that the human rights of individuals are protected from transgressions by property owners. Private ownership of property is an important right; but it is not, of course, unqualified and absolute in respect of the freedom to use it.

Remedies

Section 41 of the *Code* enables a board of inquiry to make orders to effectuate remedies. The applicable principles are discussed at length in *Cindy Cameron* v. *Nel-Gor Castle Nursing Home and Merlene Nelson*, *supra*, at D/2196, para. 18521 to D/2201.

Ms. Ward remained one year, after her child was born, at 186 Danforth Road. She then moved to North Bay. I am not persuaded on all the evidence that Ms. Ward would not have moved to North Bay in all events. North Bay presented an opportunity for Ms. Ward and Mr. Poulin to perhaps own their own home. They left Toronto only after securing transfers with their employers. I am not convinced on the evidence that they could possibly have secured another apartment in Toronto. One factor in favour of the move was the need for the space, but I do not believe it was the operative factor.

Ms. Ward has a duty to mitigate her damages. The extent of recoverable losses may

depend on whether a complainant has taken reasonable steps to avoid, "their unreasonable accumulation": *Red Deer College* v. *Michaels and Finn*, [1975] 5 W.W.R. 575 (S.C.C.) at 579. In the case at hand there was very little evidence of any real effort to find alternative accommodation within Scarboro and Toronto.

Ms. Ward did suffer some stress by remaining in a one bedroom apartment rather than being able to have more space with a two bedroom apartment, over one year after the birth of her child. In doing so, she incidentally kept in pocket the extra rent she would have had to pay for a two bedroom apartment.

Mr. Godina must be held responsible for the no-transfer policy he initiated. However, a major reason for his initiating that policy was the rude behaviour of Ms. Ward toward him in 1987. It was because he wanted to avoid such verbal confrontations and abuse in the future that he initiated the restrictive policy. This does not at all justify his policy; however, it does explain it.

In my view, $1,000 general damages is an appropriate award in this case, considering all the circumstances.

ORDER

This Board of Inquiry, having found the Respondent, Fred Godina, to be in breach of sections 2(1) and 10 of the *Ontario Human Rights Code*, 1981, c. 53 as amended, in respect of the Complainant, Ms. Jane Ward, for the reasons given, this Board of Inquiry orders the following:

1. The Respondent, Fred Godina, shall pay forthwith to the Complainant, Ms. Jane Ward, as general damages, the sum of one thousand ($1,000.00) dollars.
2. The Respondent, Fred Godina, shall cease and desist forthwith in discriminating against tenants because of family status with his apartment building through his no-transfer policy and shall terminate such policy forthwith, so as to comply with the *Ontario Human Rights Code*.

Dated at Toronto October 2nd, 1994

Peter A. Cumming
Board of Inquiry

Released by:
BOARDS OF INQUIRY
150 Eglinton Avenue E.
Suite 550
Toronto, Ontario
M4P 1E8

on October 19, 1994

Zdla Grant
Registrar